

Reg. of Investment Advisers § 1:10

Regulation of Investment Advisers
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Chapter I. Registration of Investment Advisers

§ 1:10. Who must register?—The investment adviser definition: Section 202(a)(11)—Advice, analyses, or reports about securities—General financial advice

One of the more difficult questions arises when a person or entity provides advice relating to an entity's financial or capital structure rather than investments. For example, various firms specialize in advising issuers on raising capital or restructuring their balance sheets. Services of this type are sometimes referred to as "financial advisory" services. While these activities technically may fall within the ambit of Section 202(a)(11)—since they may involve "advice or analyses" relating to "securities" (i.e., the issuer's debt or stock)—the general view is that the Advisers Act was not intended to apply to activities such as these or to general investment banking activities, although it is difficult to generalize on this issue.¹

In this regard, the SEC staff has provided relief to financial advisory firms that assist states and municipalities in structuring, timing, and providing terms of new bond issuances.² However, if the financial advisory firm's services also entail advice as to how the proceeds of bond issues should be invested, the SEC staff would likely consider the firm to be an investment adviser. For example, the staff has stated that a financial advisory firm that provides specific advice about the investment of temporary idle bond proceeds routinely or "with some regularity" is an investment adviser under the Advisers Act.³

However, the staff has also stated that a financial advisory firm that provides this type of investment advice only as an occasional accommodation to clients would not be "in the business" of providing investment advice, so long as it receives no separate, additional, or transaction-based compensation for the services and does not hold itself out as an investment adviser. Further, the staff permits a financial advisory firm to advise its financial advisory clients about investing in specific money market funds without being in the business of providing investment advice if:

- **Solely Incidental**—the advice about the money market funds is solely incidental to the financial advisory services
- **No Compensation**—the financial advisory firm receives no separate, additional, or transaction-based compensation for the advice about money market funds
- **No Holding Out**—the financial advisory firm does not hold itself out as an investment adviser
- **No Discretion**—the financial advisory firm does not have discretionary authority over the assets of its financial advisory clients that are invested in the money market funds⁴

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Footnotes

¹ L. Loss & J. Seligman, *Fundamentals of Securities Regulation*, 725 (Aspen, 3rd ed. 1995).

² See SEC Division of Investment Mgmt., Staff Legal Bull. No. 11 (Sept. 19, 2000); [The Knight Group, SEC No-Action Letter, 1991 WL 251302 \(Nov. 13, 1991\)](#).

³ See SEC Division of Investment Mgmt., Staff Legal Bull. No. 11 (Sept. 19, 2000); *In re Rauscher Pierce Refsnes, Inc.*, [Investment Advisers Act Release No. 1863 \(Apr. 6, 2000\)](#).

⁴ See SEC Division of Investment Mgmt., [Staff Legal Bulletin No. 11 \(Sept. 19, 2000\)](#).

